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Case No. 0044258-000003

**THE ASSISTANT COMMISSIONER OF PATENTS
WASHINGTON, DC 20231**

Transmitted herewith for filing in the patent application of:

Inventors: **Charles Lewis et al.**

For: **METHOD AND SYSTEM FOR HEALTHCARE PRACTICE
MANAGEMENT**

Serial No.: **09/812,704**

Filed: **March 19, 2001**

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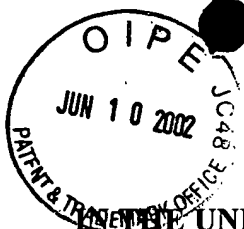
- ☒ Response to Decision for Accelerated Examination Dated April 10, 2002
- ☒ Power of Attorney and Revocation of Prior Powers
- ☒ Certificate of Express Mailing under 37 C.F.R. § 1.10
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Date

6/10/02


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PATENT

UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

Charles Lewis et al.Serial No.: **09/812,704**Filing Date: **March 19, 2001**

For:

**METHOD AND SYSTEM FOR
HEALTHCARE PRACTICE
MANAGEMENT**

Examiner:

C.L. Gilligan~~Element-Graham~~

Art Unit:

3626
~~2100~~

Atty. Docket No.: 0044258.000003

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RESPONSE TO DECISION FOR ACCELERATED
EXAMINATION DATED APRIL 10, 2002

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BOX DACAssistant Commissioner of Patents
Washington, D.C. 20231

Sir:

In response to the Decision for Accelerated Examination dated April 10, 2002, Applicants submit herewith supplemental information to address the Special Program Examiner's noted concerns in the dismissal.

First, Applicants acknowledge that if the Office determines that all of the claims presented are not obviously directed to a single invention, Applicants will make an election without traverse as a prerequisite to the grant of special status.

Second, Applicants respectfully disagree with the Examiner regarding the statements that the petitions fails to meet the requirements of 37 C.F.R. 1.111(b) and (c) when Applicants have more than paraphrased abstracts by discussing briefly in detail the relevance of the patent document and have set forth claim elements that were not present in the references. Applicants note that approximately one page of writing has been dedicated to each reference, and this writing includes language from the claims of the patent application and the fact that these elements are missing from the reference. This is clearly what makes the claims patentable over the cited reference and, as such, should be found to meet the requirements of 37 C.F.R. 1.111(b)

and (c). Applicants point out that no definition of what and what does not satisfy the “detailed discussion” requirement has not been set forth in the MPEP or other guidance of which Applicants are aware. Applicants submit that at least a bona fide good faith attempt at such has been made, and yet the Special Programs Examiner has failed to cite specifically what language and which references have failed to meet the requirements and how they have failed to meet the requirements specifically. Applicants respectfully submit that the standard is whether Applicants have made a “bona fide” attempt, and Applicants respectfully submit that the Examiner never suggested that a bona fide attempt has not been made. Instead, the Examiner appears to want more than what Applicant provided, but has not set forth that what Applicant did was not a bona fide attempt. As such, Applicants respectfully submit that the Special Program Examiner has failed to meet the requirements of providing Applicants with adequate notice and clarity in the decision so that Applicants can make a decision on how to handle or respond to the decision as required by the Office. Therefore, for at least this reason, Applicants request reconsideration of the decision and that such reconsideration be granted.

Also, Applicants respectfully submit that merely saying that Applicants have not met the requirements by merely paraphrasing the abstracts, need to provide a detailed discussion, and need to reference which independent claim elements are referenced and which elements are lacking is not enough to ensure that Applicants adequately address the Special Programs Examiner’s concerns in the decision. Although Applicants respect the Special Program Examiner and his expertise, Applicants respectfully submit that the language set forth by the Examiner that: “given the different subject matter of each independent claim, when discussing the claims in view of the references, each independent claim should be specifically referred to and discussed with regards to each reference[,]” is not found in 37 C.F.R. 1.111(b) and (c) or the MPEP. Applicants respectfully submit that the rule was understood by them to the extent that the detailed discussion is made in Although Applicants can respectfully guess at reasons for the Examiner’s desire for this type of response, Applicants respectfully submit that neither the rules nor the explanations of the rules provide this type of specific language to which Applicants should provide. As such, Applicants again submit that they have made a “bona fide” attempt and that this is the standard to which 37 C.F.R. 1.111(b) requires and that what Applicants submitted was much more than a mere general allegation of patentability. Applicants submit that because

what meets or satisfies a detailed discussion is not set forth in the rule or MPEP, that because the Examiner is requiring information not specifically set forth in the rule, and that because the requirements are not clear, Applicants submit that for this reason as well, reconsideration should be granted.

Nevertheless, despite Applicants concerns set forth above, Applicants herein below repeat and supplement the detailed discussion of each of the reference cited below and further sets forth how the claimed subject matter is patentable over the references. More specifically, Applicants have made a bona fide attempt to discuss specific limitations in the claims not found in the cited art and have attempted to discuss each independent claim with respect to each reference cited as suggested by the Special Programs Examiner. Applicants have previously submitted the cited references and the search information on the prior Petition and such information was not objected to by the Examiner. Accordingly, for brevity, Applicants have not resubmitted the same herewith. Applicants respectfully submit that such "detailed discussion" below further meets the requirements of 37 C.F.R. 1.111(b) and (c).

(1) Pack-Harris '612 describes a pharmacy benefit management system for managing prescription drug activity of an individual physician and/or an entire medical group. The system includes a pharmacy computer for generating pharmacy claim information including prescribed drug information corresponding to prescription activity, a plurality of health plan computers each associated with a different health plan for generating pharmacy activity information for a medical group, and a medical group computer that receives and stores the pharmacy activity information from the health plan computer for evaluation (see computers shown in FIG. 1). The pharmacy activity information is processed to thereby enable a medical group to monitor the pharmacy activity within the medial group. This monitoring including means for determining the actual cost to the medical group for prescription drugs prescribed by doctors based on the received information from the health plans and means for comparing determined actual costs and stored capitation benefits from a plurality of health plans. In other words, this patent describes providing information to medical groups about differences in actual versus capitation costs for the medical groups, but unlike the claimed invention of the present application this patent fails to teach or suggest what to do about the recognized differences or how to increase profitability of the medical group based on any recognized differences. For example, the patent merely sets

forth that “[b]ased upon the utilization information, the pharmacy activity can be modified to ensure the medical group 20 is incurring a pharmacy benefit profit.” (col. 4, lines 52-54). The patent suggests that the reports or used to generate profit or loss statement with respect to pharmacy benefits, identification of patterns of utilization, identification of problem areas for the medical group, and creation of treatment guidelines based on disease states to improve the management of the disease state and to set standards for pharmaceutical utilization (see col. 5, lines 3-9). The patent is silent on how this is to be accomplished and to which the present application submits is one of the problems addressed by the claimed invention. Applicants claimed invention, for example, differs from this patent in at least the following ways:

(a) Independent Method Claim 1: Although this patent describes gathering pharmacy data from healthcare plans for a medical group of physicians, this patent at least fails to teach or suggest gathering data from each of a plurality of physicians in a healthcare group to identify at least one of the plurality of physicians in the healthcare practice participating in the insurance network that is at a greater risk of not receiving the predetermined reimbursement amount for the pharmacy costs from the insurance network by prescribing medications that are detrimental to receiving the predetermined reimbursement amount for the pharmacy costs, and modifying the management behavior of the at least one physician so that the at least one physician will no longer be at risk of not receiving the predetermined amount from the insurance network. In other words, the patent generates reports, but fails to sets forth what to do with these reports and whether these reports have adequate information to modify the management behavior of the physician(s) at risk.

(b) Independent Method Claim 13: Although this patent describes gathering pharmacy data from healthcare plans for a medical group of physicians, this patent at least fails to teach or suggest how to optimize profitability by gathering data from each of a plurality of physicians in the healthcare practice participating in the insurance network regarding management of a selected ancillary medical cost to identify at least one of the plurality of physicians in the healthcare network that is at a greater risk of not receiving the predetermined reimbursement amount for the ancillary medical costs from the insurance network by engaging in ancillary medical procedures that are detrimental to receiving the predetermined reimbursement amount for the ancillary medical costs, and modifying the at least one physician’s

management behavior regarding the ancillary medical costs to substantially reduce the risk of not receiving the predetermined reimbursement amount for the ancillary medical costs from the insurance network. In other words, the patent generates reports, but fails to sets forth what to do with these reports and whether these reports have adequate information to modify the management behavior of the physician(s) at risk.

(c) Independent Method Claim 20: Although this patent describes gathering pharmacy data from healthcare plans for a medical group, this patent at least fails to teach or suggest gathering data from each of the plurality of physicians in the healthcare practice participating in an insurance network regarding management of ancillary medical costs, modifying the plurality of physicians' behavior in the healthcare management practice regarding ancillary medical costs that are not profitable for the insurance network, and providing a financial incentive to the insurance network and the plurality of physicians in the healthcare management practice participating in the insurance network to modify the plurality of physician's management behavior of ancillary medical costs that are not as profitable to the insurance network. In other words, the patent generates reports, but fails to sets forth what to do with these reports and whether these reports have adequate information to modify the management behavior of the physician(s) at risk.

(d) Independent System Claim 37: Although this patent describes a system to gather pharmacy data from healthcare plans for a medical group, this patent at least fails to teach or suggest managing means responsive to an analyzer which analyzes ancillary costs preferred by an insurance network and ancillary costs not preferred by an insurance network. The managing means preferably manages the ancillary medical costs to modify the ancillary costs of the physicians in the healthcare practice to be more profitable to the insurance network. The managing means, for example, can include an identifier to identify at least one of the physicians that is at risk of not receiving a predetermined reimbursement amount by engaging in procedures that are detrimental to receiving the reimbursement amount (see Claim 38). Also, the analyzer, for example, can include a calculating means for calculating an average ancillary medical cost per physician and identifying at least one physician that is greater than the average (see Claim 39).

(e) Independent System Claim 46: Although this patent describes a system to gather pharmacy data from healthcare plans for a medical group, this patent at least fails to teach or suggest an updater positioned on a server and responsive to a user interface updating each of a plurality of physicians in a healthcare practice of any changes in the management of ancillary medical costs that are preferred by an insurance network and recommending means positioned on a server and responsive to a user interface for recommending to each of the plurality of physicians alternative ancillary medical procedures that are preferred by the insurance network

(2) Both Seare et al. '164 and Seare et al. '514 describe a method and system for generating statistically based medical provider utilization profiles based on collection and analysis of historical medical provider billings. These patents describe systems and methods which read, analyze, and merge historical data collected from provider billings to be compared by treatment costs and patient outcome to determine the most cost effective treatment approach. These systems and methods also identify those medical providers who provide treatment that does not fall within predetermined treatment patterns or profiles. The data is used to compare an individual treatment or a treatment group against a trend or norm by taking raw data from medical providers and creating an informative historical database and by grouping types of data. These patents, however, for example, at least fail to teach or suggest action for identifying physicians whose behavior needs to be modified to reduce costs associated with procedures used in an ancillary medical cost and steps for modifying the physicians behavior to reduce the costs.

(a) Independent Method Claim 1: Although these patents describe gathering pharmacy data from healthcare plans for a medical group of physicians, these patents at least fail to teach or suggest gathering data from each of a plurality of physicians in a healthcare group to identify at least one of the plurality of physicians in the healthcare practice participating in the insurance network that is at a greater risk of not receiving the predetermined reimbursement amount for the pharmacy costs from the insurance network by prescribing medications that are detrimental to receiving the predetermined reimbursement amount for the pharmacy costs, and modifying the management behavior of the at least one physician so that the at least one physician will no longer be at risk of not receiving the predetermined amount from the insurance network. In other words, the patent generates reports and identifies providers who do not fall within treatment patterns or profiles, but fails to sets forth what to do with these reports and

whether these reports have adequate information to modify the management behavior of the physician(s) at risk.

(b) Independent Method Claim 13: Although these patents describe gathering pharmacy data from healthcare plans for a medical group of physicians, these patents at least fail to teach or suggest how to optimize profitability by gathering data from each of a plurality of physicians in the healthcare practice participating in the insurance network regarding management of a selected ancillary medical cost to identify at least one of the plurality of physicians in the healthcare network that is at a greater risk of not receiving the predetermined reimbursement amount for the ancillary medical costs from the insurance network by engaging in ancillary medical procedures that are detrimental to receiving the predetermined reimbursement amount for the ancillary medical costs, and modifying the at least one physician's management behavior regarding the ancillary medical costs to substantially reduce the risk of not receiving the predetermined reimbursement amount for the ancillary medical costs from the insurance network. In other words, the patent generates reports and identifies providers who do not fall within treatment patterns or profiles, but fails to sets forth what to do with these reports and whether these reports have adequate information to modify the management behavior of the physician(s) at risk.

(c) Independent Method Claim 20: Although these patents describes gathering pharmacy data from healthcare plans for a medical group, these patents at least fail to teach or suggest gathering data from each of the plurality of physicians in the healthcare practice participating in an insurance network regarding management of ancillary medical costs, modifying the plurality of physicians' behavior in the healthcare management practice regarding ancillary medical costs that are not profitable for the insurance network, and providing a financial incentive to the insurance network and the plurality of physicians in the healthcare management practice participating in the insurance network to modify the plurality of physician's management behavior of ancillary medical costs that are not as profitable to the insurance network. In other words, these patents describe a system that generates reports and identifies providers who do not fall within treatment patterns or profiles, but fails to sets forth what to do with these reports and whether these reports have adequate information to modify the management behavior of the physician(s) at risk.

(d) Independent System Claim 37: Although this patent describes a system to gather pharmacy data from healthcare plans for a medical group, this patent at least fails to teach or suggest managing means responsive to an analyzer which analyzes ancillary costs preferred by an insurance network and ancillary costs not preferred by an insurance network. The managing means preferably manages the ancillary medical costs to modify the ancillary costs of the physicians in the healthcare practice to be more profitable to the insurance network.

(e) Independent System Claim 46: Although these patents describe a system to gather pharmacy data from healthcare plans for a medical group, these patents at least fail to teach or suggest an updater positioned on a server and responsive to a user interface updating each of a plurality of physicians in a healthcare practice of any changes in the management of ancillary medical costs that are preferred by an insurance network and recommending means positioned on a server and responsive to a user interface for recommending to each of the plurality of physicians alternative ancillary medical procedures that are preferred by the insurance network

(3) McIroy et al. '704 describes a healthcare management system to provide recommended treatment conditions responsive to user inputted query-response process for inputting information related to a predetermined health condition. A guideline treatment option is then provided to the user. The user may accept the guidelines provided or input proposed treatments that are different. Discrepancies between actual treatment provided to the individual and recommended treatment are identified and further analyzed. In other words, this patent describes a system which recommends proposed treatments of patients based on information provided to the system about a patient. This patent has little to do with management healthcare practice group costs and at least fails to teach or suggest modifying management practices for an ancillary cost of a medical or healthcare practice group.

(a) Independent Method Claim 1: This patent at least fails to teach or suggest gathering data from each of a plurality of physicians in a healthcare group to identify at least one of the plurality of physicians in the healthcare practice participating in the insurance network that is at a greater risk of not receiving the predetermined reimbursement amount for the pharmacy costs from the insurance network by prescribing medications that are detrimental to receiving the predetermined reimbursement amount for the pharmacy costs, and modifying the management

behavior of the at least one physician so that the at least one physician will no longer be at risk of not receiving the predetermined amount from the insurance network.

(b) Independent Method Claim 13: This patent at least fails to teach or suggest how to optimize profitability by gathering data from each of a plurality of physicians in the healthcare practice participating in the insurance network regarding management of a selected ancillary medical cost to identify at least one of the plurality of physicians in the healthcare network that is at a greater risk of not receiving the predetermined reimbursement amount for the ancillary medical costs from the insurance network by engaging in ancillary medical procedures that are detrimental to receiving the predetermined reimbursement amount for the ancillary medical costs, and modifying the at least one physician's management behavior regarding the ancillary medical costs to substantially reduce the risk of not receiving the predetermined reimbursement amount for the ancillary medical costs from the insurance network. In other words, the patent generates reports and identifies providers who do not fall within treatment patterns or profiles, but fails to sets forth what to do with these reports and whether these reports have adequate information to modify the management behavior of the physician(s) at risk.

(c) Independent Method Claim 20: This patent at least fails to teach or suggest gathering data from each of the plurality of physicians in the healthcare practice participating in an insurance network regarding management of ancillary medical costs, modifying the plurality of physicians' behavior in the healthcare management practice regarding ancillary medical costs that are not profitable for the insurance network, and providing a financial incentive to the insurance network and the plurality of physicians in the healthcare management practice participating in the insurance network to modify the plurality of physician's management behavior of ancillary medical costs that are not as profitable to the insurance network. In other words, these patents describe a system that generates reports and identifies providers who do not fall within treatment patterns or profiles, but fails to sets forth what to do with these reports and whether these reports have adequate information to modify the management behavior of the physician(s) at risk.

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(e) Independent System Claim 46: This patent at least fails to teach or suggest an updater positioned on a server and responsive to a user interface updating each of a plurality of physicians in a healthcare practice of any changes in the management of ancillary medical costs that are preferred by an insurance network and recommending means positioned on a server and responsive to a user interface for recommending to each of the plurality of physicians alternative ancillary medical procedures that are preferred by the insurance network

(4) Javit '208 and U.S. Patent Application No. 20010041990 to Javitt (Javitt '990) both describe a system in which a medical professional can input a plurality of variables relating to alternative contract scenarios and consults a database to forecast utilization of medical procedures and estimated revenue per procedure under different scenarios. The system compares likely revenue for a plurality of services to revenue for those services under a current reimbursement scenario. This system allows a physician to use a broad array of assumptions for forecasting utilization of medical procedures and estimating revenue per procedure. The system allows different revenue amounts to be displayed together on a screen for visual comparison as well. This patent and patent application, however, also have little to do with managing healthcare costs of ancillary services of a healthcare practice group and modifying behavioral patterns in such a group.

(a) Independent Method Claim 1: This patent and patent application at least fail to teach or suggest gathering data from each of a plurality of physicians in a healthcare group to identify at least one of the plurality of physicians in the healthcare practice participating in the insurance network that is at a greater risk of not receiving the predetermined reimbursement amount for the pharmacy costs from the insurance network by prescribing medications that are detrimental to receiving the predetermined reimbursement amount for the pharmacy costs, and modifying the management behavior of the at least one physician so that the at least one physician will no longer be at risk of not receiving the predetermined amount from the insurance network.

(b) Independent Method Claim 13: This patent and patent application at least fail to teach or suggest how to optimize profitability by gathering data from each of a plurality of

physicians in the healthcare practice participating in the insurance network regarding management of a selected ancillary medical cost to identify at least one of the plurality of physicians in the healthcare network that is at a greater risk of not receiving the predetermined reimbursement amount for the ancillary medical costs from the insurance network by engaging in ancillary medical procedures that are detrimental to receiving the predetermined reimbursement amount for the ancillary medical costs, and modifying the at least one physician's management behavior regarding the ancillary medical costs to substantially reduce the risk of not receiving the predetermined reimbursement amount for the ancillary medical costs from the insurance network. In other words, the patent generates reports and identifies providers who do not fall within treatment patterns or profiles, but fails to sets forth what to do with these reports and whether these reports have adequate information to modify the management behavior of the physician(s) at risk.

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(5) Lockwood '441 describes a method and apparatus for determining case load complexity level for each healthcare provider in a healthcare provider group. In-patient and out-patient records are stored in a database, and a plurality of sickness episodes are built using the in-patient and out-patient records. An objective severity assessment is performed for each of the sickness episode data records and a score is assigned. A case load complexity is then determined. The case load complexity level is representative of the patient case load serviced by a particular healthcare provider within the group of healthcare providers. This patent has little to do with management healthcare practice group costs and at least fails to teach or suggest modifying management practices for an ancillary cost of a medical or healthcare practice group.

(a) Independent Method Claim 1: This patent at least fails to teach or suggest gathering data from each of a plurality of physicians in a healthcare group to identify at least one of the plurality of physicians in the healthcare practice participating in the insurance network that is at a greater risk of not receiving the predetermined reimbursement amount for the pharmacy costs from the insurance network by prescribing medications that are detrimental to receiving the predetermined reimbursement amount for the pharmacy costs, and modifying the management behavior of the at least one physician so that the at least one physician will no longer be at risk of not receiving the predetermined amount from the insurance network.

(b) Independent Method Claim 13: This patent at least fails to teach or suggest how to optimize profitability by gathering data from each of a plurality of physicians in the healthcare practice participating in the insurance network regarding management of a selected ancillary medical cost to identify at least one of the plurality of physicians in the healthcare network that is at a greater risk of not receiving the predetermined reimbursement amount for the ancillary medical costs from the insurance network by engaging in ancillary medical procedures

that are detrimental to receiving the predetermined reimbursement amount for the ancillary medical costs, and modifying the at least one physician's management behavior regarding the ancillary medical costs to substantially reduce the risk of not receiving the predetermined reimbursement amount for the ancillary medical costs from the insurance network. In other words, the patent generates reports and identifies providers who do not fall within treatment patterns or profiles, but fails to sets forth what to do with these reports and whether these reports have adequate information to modify the management behavior of the physician(s) at risk.

(c) Independent Method Claim 20: This patent at least fails to teach or suggest gathering data from each of the plurality of physicians in the healthcare practice participating in an insurance network regarding management of ancillary medical costs, modifying the plurality of physicians' behavior in the healthcare management practice regarding ancillary medical costs that are not profitable for the insurance network, and providing a financial incentive to the insurance network and the plurality of physicians in the healthcare management practice participating in the insurance network to modify the plurality of physician's management behavior of ancillary medical costs that are not as profitable to the insurance network. In other words, these patents describe a system that generates reports and identifies providers who do not fall within treatment patterns or profiles, but fails to sets forth what to do with these reports and whether these reports have adequate information to modify the management behavior of the physician(s) at risk.

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(6) Perkins et al. '379 describes a computer aided system for comparing healthcare services from different providers. The system makes the comparison independent of the clinical complexity of treating diseases of patients involved. The system uses all the available health care experience from both in-patient and out-patient claims data and translates the information into standard input files associated with each specific patient to reveal as much as possible about the state of each patient's health. More particularly, the patent describes collecting data regarding diseases of patients in a predetermined population, comparing the diseases of the patients, and modifying healthcare services rendered to improve their efficiency. This patent has little to do with management healthcare practice group costs and at least fails to teach or suggest modifying management practices for an ancillary cost of a medical or healthcare practice group.

(a) Independent Method Claim 1: This patent at least fails to teach or suggest gathering data from each of a plurality of physicians in a healthcare group to identify at least one of the plurality of physicians in the healthcare practice participating in the insurance network that is at a greater risk of not receiving the predetermined reimbursement amount for the pharmacy costs from the insurance network by prescribing medications that are detrimental to receiving the predetermined reimbursement amount for the pharmacy costs, and modifying the management behavior of the at least one physician so that the at least one physician will no longer be at risk of not receiving the predetermined amount from the insurance network.

(b) Independent Method Claim 13: This patent at least fails to teach or suggest how to optimize profitability by gathering data from each of a plurality of physicians in the healthcare practice participating in the insurance network regarding management of a selected ancillary medical cost to identify at least one of the plurality of physicians in the healthcare network that is at a greater risk of not receiving the predetermined reimbursement amount for the ancillary medical costs from the insurance network by engaging in ancillary medical procedures that are detrimental to receiving the predetermined reimbursement amount for the ancillary medical costs, and modifying the at least one physician's management behavior regarding the ancillary medical costs to substantially reduce the risk of not receiving the predetermined reimbursement amount for the ancillary medical costs from the insurance network. In other words, the patent generates reports and identifies providers who do not fall within treatment

patterns or profiles, but fails to sets forth what to do with these reports and whether these reports have adequate information to modify the management behavior of the physician(s) at risk.

(c) Independent Method Claim 20: This patent at least fails to teach or suggest gathering data from each of the plurality of physicians in the healthcare practice participating in an insurance network regarding management of ancillary medical costs, modifying the plurality of physicians' behavior in the healthcare management practice regarding ancillary medical costs that are not profitable for the insurance network, and providing a financial incentive to the insurance network and the plurality of physicians in the healthcare management practice participating in the insurance network to modify the plurality of physician's management behavior of ancillary medical costs that are not as profitable to the insurance network. In other words, these patents describe a system that generates reports and identifies providers who do not fall within treatment patterns or profiles, but fails to sets forth what to do with these reports and whether these reports have adequate information to modify the management behavior of the physician(s) at risk.

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(7) Dang '897 describes a computer program for profiling medical claims to assist healthcare managers in determining the cost-efficiency and service quality of healthcare providers. The computer program described collects group data based on episode treatment groups (ETGs) or categories, and compares the various treatments of the patients to determine the most cost efficient treatment. The ETGs are clinically homogeneous and statistically stable

groups of similar illness etiology and therapeutic treatment. The system and methods provide healthcare managers a way to analyze and compare cost-efficiency information based on ETGs. This patent has little to do with management healthcare practice group costs and at least fails to teach or suggest modifying management practices for an ancillary cost of a medical or healthcare practice group.

(a) Independent Method Claim 1: This patent at least fails to teach or suggest gathering data from each of a plurality of physicians in a healthcare group to identify at least one of the plurality of physicians in the healthcare practice participating in the insurance network that is at a greater risk of not receiving the predetermined reimbursement amount for the pharmacy costs from the insurance network by prescribing medications that are detrimental to receiving the predetermined reimbursement amount for the pharmacy costs, and modifying the management behavior of the at least one physician so that the at least one physician will no longer be at risk of not receiving the predetermined amount from the insurance network.

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(d) Independent System Claim 37: This patent at least fails to teach or suggest managing means responsive to an analyzer which analyzes ancillary costs preferred by an insurance network and ancillary costs not preferred by an insurance network. The managing means preferably manages the ancillary medical costs to modify the ancillary costs of the physicians in the healthcare practice to be more profitable to the insurance network.

(e) Independent System Claim 46: This patent at least fails to teach or suggest an updater positioned on a server and responsive to a user interface updating each of a plurality of physicians in a healthcare practice of any changes in the management of ancillary medical costs that are preferred by an insurance network and recommending means positioned on a server and responsive to a user interface for recommending to each of the plurality of physicians alternative ancillary medical procedures that are preferred by the insurance network

(8) U.S. Patent Application 20010037216 by Oscar et al. (Oscar '216) describes a pharmacy benefits management system to identify drugs dispensed to patients, expenses associated with the drugs in accordance with the pharmacy benefits plan, and identify alternative drugs in the same class. The system includes a processor server having claims information which relates to pharmacy benefits claims, a provider server having pharmacy benefits plan structure stored thereon, a management server having price information relating drugs to various classes, and a processing module for correlating the claim information with the benefits plan structure information and the formulary information to identify drugs dispensed to patients, expenses associated with the drugs in accordance with the pharmacy benefits plan structure information, alternative drugs in the same class as the drugs, and expenses associated with the alternative drugs. Although this patent relates to identifying alternative drugs that can be used by

physicians, this patent has little to do with management healthcare practice group costs and at least fails to teach or suggest modifying management practices for an ancillary cost of a medical or healthcare practice group.

(a) Independent Method Claim 1: This patent at least fails to teach or suggest gathering data from each of a plurality of physicians in a healthcare group to identify at least one of the plurality of physicians in the healthcare practice participating in the insurance network that is at a greater risk of not receiving the predetermined reimbursement amount for the pharmacy costs from the insurance network by prescribing medications that are detrimental to receiving the predetermined reimbursement amount for the pharmacy costs, and modifying the management behavior of the at least one physician so that the at least one physician will no longer be at risk of not receiving the predetermined amount from the insurance network.

(b) Independent Method Claim 13: This patent at least fails to teach or suggest how to optimize profitability by gathering data from each of a plurality of physicians in the healthcare practice participating in the insurance network regarding management of a selected ancillary medical cost to identify at least one of the plurality of physicians in the healthcare network that is at a greater risk of not receiving the predetermined reimbursement amount for the ancillary medical costs from the insurance network by engaging in ancillary medical procedures that are detrimental to receiving the predetermined reimbursement amount for the ancillary medical costs, and modifying the at least one physician's management behavior regarding the ancillary medical costs to substantially reduce the risk of not receiving the predetermined reimbursement amount for the ancillary medical costs from the insurance network. In other words, the patent generates reports and identifies providers who do not fall within treatment patterns or profiles, but fails to sets forth what to do with these reports and whether these reports have adequate information to modify the management behavior of the physician(s) at risk.

(c) Independent Method Claim 20: This patent at least fails to teach or suggest gathering data from each of the plurality of physicians in the healthcare practice participating in an insurance network regarding management of ancillary medical costs, modifying the plurality of physicians' behavior in the healthcare management practice regarding ancillary medical costs that are not profitable for the insurance network, and providing a financial incentive to the insurance network and the plurality of physicians in the healthcare management practice

participating in the insurance network to modify the plurality of physician's management behavior of ancillary medical costs that are not as profitable to the insurance network. In other words, these patents describe a system that generates reports and identifies providers who do not fall within treatment patterns or profiles, but fails to sets forth what to do with these reports and whether these reports have adequate information to modify the management behavior of the physician(s) at risk.

(d) Independent System Claim 37: This patent at least fails to teach or suggest managing means responsive to an analyzer which analyzes ancillary costs preferred by an insurance network and ancillary costs not preferred by an insurance network. The managing means preferably manages the ancillary medical costs to modify the ancillary costs of the physicians in the healthcare practice to be more profitable to the insurance network.

(e) Independent System Claim 46: This patent at least fails to teach or suggest an updater positioned on a server and responsive to a user interface updating each of a plurality of physicians in a healthcare practice of any changes in the management of ancillary medical costs that are preferred by an insurance network and recommending means positioned on a server and responsive to a user interface for recommending to each of the plurality of physicians alternative ancillary medical procedures that are preferred by the insurance network

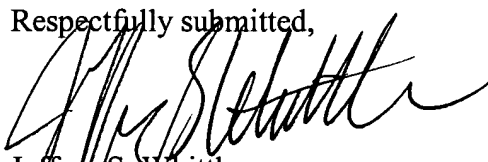
(9) The information declaration by Charles C. Lewis and Terrance Moore notes that prior to the filing date, confidential experimental testing directed to the functional features of the invention claimed in the present application was conducted. More specifically, the declaration discloses a first confidential test that was conducted between October 1998 and December 1999 with Telesis Health Management (Telesis) and a second confidential test that was conducted between December 1998 and December 1998 with Deaconess Health Connection (Deaconess). The confidential testing included gathering data from both Telesis and Deaconess, confidentially analyzing the gathered data (in other words, not disclosing how the data was analyzed to Telesis or Deaconess), and providing the results of the analysis to representatives of Telesis and Deaconess. The first confidential test that was conducted for Telesis revealed problems in the system and methods which led to further development of the systems and methods. The further developed system and methods were again tested in a second confidential test which was conducted for Deaconess. The results of the second confidential test were analyzed and

problems were again identified. The system and methods were still further developed and substantial improvements were made in an effort to perfect the system and method of the present invention as set forth in the declaration. Due to the confidential status, Applicants submit that the declaration should not be considered prior art. Nevertheless, to comply with Applicants duty of candor and in good faith, Applicants believe that the Patent Office should know about this information and consider it in view of the pending claims.

Conclusion

Applicants respectfully submit that all the references located during the patentability search have been described in detail above as required in supplement to the previous petition documents. Applicants therefore request that the petition be reconsidered and granted.

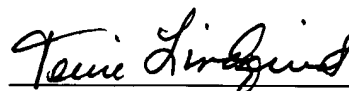
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I hereby certify that this correspondence and its attachments are being deposited with the United States Postal Service as Express Mail, Express Mail Label EL901963393US, in an envelope addressed to: Assistant Commissioner for Patents, Box DAC, Washington, D.C 20231, on this ____ day of June, 2002.



Terrie Lindquist